



EMPLOYMENT TRIBUNALS

Claimant: Michael Longshaw

Respondent: Brocket Hall (Holding) Limited

Heard at: Watford ET (via CVP) **On:** 3, 4, 5 and 8 June 2026

Before: Employment Judge G. King

Representation

For the Claimant: Mr R. Downey – counsel

For the Respondent: Mr A. Sendall – counsel

RESERVED JUDGMENT

1. The Claimant's claim of unfair dismissal is well-founded and succeeds. The Respondent unfairly dismissed the Claimant.
2. *Polkey* is assessed at nil.
3. Contributory fault is assessed at 100% within six months of the EDT.
4. The claim in respect of notice pay (breach of contract) is well-founded and succeeds.
5. The claim for unpaid expenses succeeds in part. The Respondent shall pay the Claimant the sum of £1,881.18 in respect of unpaid expenses.
6. The claim in respect of personal property is not well-founded and is dismissed.
7. The Respondent failed to follow the ACAS Code of Practice on Disciplinary and Grievance Procedures. Compensation payable to the Claimant shall be subject to an uplift of 15%.

REASONS

The Claim

1. By a Claim Form dated 14 April 2025, the Claimant brought a claim of unfair dismissal.
2. The Tribunal was assisted by an agreed bundle of 667 pages. Where documents from that bundle are referred to in this judgment, the page number is designated in [square brackets].
3. The Tribunal heard live witness evidence from Ms Qian Wang, Mr Meng Xu and Mr Neil Sampson on behalf of the Respondent. Ms Wang also goes by the first name Linda, and so may be referred to as Qian Wang or Linda Wang in evidence. Similarly, Mr Xu also goes by the first name David, referred to as Meng Xu or David Xu in evidence. Some evidence also refers to Mr Zhou Feng, who also goes by Joe Feng. The Tribunal heard from the Claimant and Mr Edmund on behalf of the Claimant. A statement from Lesley Saunders was provided as a witness for the Claimant, but she did not attend the Tribunal to give live evidence and so the Tribunal placed limited weight on this statement.
4. Where paragraphs of witness statements are referred to, they are referred to in [square brackets] with the initials of the witness and paragraph number, e.g. [QW 1] for paragraph one of the witness statement of Qian Wang.
5. The Tribunal made its findings of fact having regard to all of the evidence and did so on a balance of probabilities. In assessing evidence relating to this claim, we have borne in mind the guidance given in Gestmin SGPS v Credit Suisse (UK) Ltd [2013] EWHC 3560; that research shows that human memories are fallible and memories are not always a perfectly accurate record of what happened, no matter how strongly somebody may think they remember something clearly. Most of us are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. The process of going through Tribunal proceedings can create biases in memories. The Judge in Gestmin said, "above all it is important to avoid the fallacy of supposing that because a witness has confidence in her or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

Issues before the Tribunal

Unfair Dismissal

6. The Claimant accepts that misconduct could be a potentially fair reason under section 98 Employment Rights Act 1996 ("ERA").
7. The issues for the Tribunal to consider therefore are:

Fairness:

- a. Applying the test of fairness in section 98(4), did the Respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the Claimant?
- b. The Tribunal has to decide, in particular, whether:
 - i. The Respondent adequately warned the Claimant;
 - ii. The Respondent adopted a reasonable investigation;
 - iii. The Respondent followed a fair procedure;
 - iv. Dismissal was within the range of reasonable responses.

Remedy:

- c. What financial losses has the Claimant suffered?
 - d. Has the Claimant taken reasonable steps to replace lost earnings?
 - e. If not, for what period of loss should the Claimant be compensated for?
 - f. Is there a chance that the Claimant's employment would have ended in any event? Should his compensation be reduced as a result? In determining this, the Tribunal must make findings in relation to the alleged misconduct, and whether this would have amounted to gross misconduct.
 - g. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?
8. The correct approach to fairness is based on British Home Stores v Burchell [1980] ICR 303, although since that case was decided the burden on the employer to show fairness has been removed.
 9. The Tribunal also had reference to the ACAS Code of Practice on Discipline and Grievance Procedures 2015, and took account of the whole process including any appeal: Taylor v OCS Group Ltd [2006] IRLR 613.
 10. Applying Burchell, and Sainsbury's Supermarkets Ltd v Hitt [2003] IRLR 23, the questions for the Tribunal are:
 - a. What was the reason, or principal reason for dismissal? The Respondent asserts that the reason was misconduct.
 - b. Did the Respondent genuinely believe that the Claimant was guilty of misconduct?
 - c. If so, was that belief based on reasonable grounds? This considers the information available at the time of the dismissal and appeal decisions and the Tribunal is evaluating whether the view that there was misconduct is a view within the band of reasonable responses.
 - d. Had the employer carried out such investigation into the matter as was reasonable? Again, this is a question of the band of reasonable responses. Relevant are the nature of the allegations, the position

of the Claimant and the size and resources of the employer. It is wrong to expect a meticulous investigation of the kind that would be done in a criminal enquiry.

- e. Did the employer follow a reasonably fair procedure? The ACAS Code is relevant here, as are the employer's own procedures. The key point is that an employer acting fairly will give the employee sufficient details of the allegations and the evidence in enough time before the disciplinary hearing to enable the employee to have a fair chance to respond, and there will be a right of appeal to another person if the employee is dissatisfied with the decision.
 - f. If all those requirements are met, was it within the band of reasonable responses to dismiss the Claimant rather than impose some other disciplinary sanction such as a warning? The Tribunal must not substitute its own view for that of the employer. Reference to the employer's disciplinary policy is likely to be important, particularly to any definition of gross misconduct in cases where it is dismissal for a first offence.
11. The Respondent also argues that even if the dismissal was unfair there should be a reduction in compensation because of contributory fault by the Claimant, and/or a *Polkey* reduction on the basis that if the employer had acted fairly the Claimant would have been dismissed in any event at or around the same time Polkey v AE Dayton Services Ltd [1987] UKHL 8. These are matters which relate solely to remedy, but it is necessary for the Tribunal to make a determination on these as part of its decision on whether the claim succeeds or fails. The same is true when considering adjustment on the basis that there was an unreasonable failure by the other to follow the ACAS Code of Practice.

Wrongful Dismissal (Breach of Contract)

12. The Claimant's contractual notice period was three months. Did the Respondent failed to pay this notice pay in circumstances when it was contractually obliged to do so?
13. Did this claim arise or was it outstanding when the Claimant's employment ended?

Unpaid expenses

14. Did the Respondent fail to pay the Claimant in respect of expenses which he had a right to be reimbursed for?
15. If so, what is the sum that is due to the Claimant?

Disposal of personal property

16. Did the Respondent dispose of personal property of the Claimant and is the Respondent required, either by contract or other legal obligation, to reimburse the Claimant for that property?

17. If so, what is the sum that is due to the Claimant?

Findings of Fact

18. The Tribunal has not embarked on a full finding of fact in relation to the entire history of the relationship between the Claimant and the Respondent and other associated parties. The Tribunal has only made findings of facts where they are relevant to the issues that must be decided by the Tribunal.

The Claimant's employment

19. It is agreed by the parties that the Claimant was employed by the Respondent.
20. The Claimant worked full time as the general manager of the Brocket Hall Estate since 2016 via his role in his own business, International Golf & Resort Management Limited ("IGRM").
21. This is not disputed between the parties. Ms Wang says: *"From January 2020 onwards, the Claimant (providing his services through IGRM) took on a significant day-to-day operational role at the estate. Although engaged only on a rolling, month-to-month arrangement, he effectively acted as the main point of contact for staff and suppliers to the Respondent. In practice, he oversaw and co-ordinated the day-to-day running of the estate, including finance updates, HR administration, sales and marketing activity, compliance matters, and the daily operations of greenkeeping, property maintenance, security and golf member services"* [LW 8].
22. Mr Xu says: *"The Claimant provided management services to the Respondent via his company International Golf & Resort Management Limited ("IGRM") from January 2020 onwards"* [MX 5].
23. The Claimant carried out exactly the same role for the Respondent as he had previously done under the previous operating company, Brocket Hall (UK) Limited.
24. The circumstances surrounding the beginning of the Claimant's employment are controversial.
25. In early 2020 the Claimant entered into an employment contract with the Respondent under which he worked as a Business Adviser for two days a week on a salary of £38,000 a year. A copy of this contract of employment is at [66-84]. None of the Claimant's duties were described in his contract of employment and there was no job description provided later. The Claimant also continued to provide management services to the Respondent via IGRM for the remainder of the week. The actual time spent on these duties could vary, according to the Claimant's evidence. The Claimant's evidence was that the reason for the Respondent personally employing him was so that he could be paid a wage, as the previous owner of Brocket Hall had gone into administration, owing the IGRM a substantial sum of money.

26. The job title in the Claimant's contract of employment dated 24 February 2020 was "*Company Business Adviser*" [66]. There was no job description prepared for the role. The Claimant's case is that his employment started on 30 January 2020 [5]. This was when the Respondent acquired the assets from Brocket Hall (UK) Ltd, which was then in administration. A "*Recruitment Authority Form*" was provided to the Tribunal [533] which gives a start date of 30 January 2020, authorised by Sue Roworth (Respondent's personnel and deputy general manager). This form, however, is attached to an email from Ms Roworth, sent to Ms Wang and Mr Feng, which is dated 27 March 2020. It says:

"Linda / Joe

Please find attached recruitment authority for Michael Longshaw – Michael has asked me to add him to the payroll in time for March payroll (this would mean he would be paid/calculated for February and March Pay) - please would you authorise and confirm if I should send to David also?

Many thanks" [532]

27. Mr Xu said in cross-examination that he signed the Claimant's contract of employment sometime after 27 March 2020, and that the Claimant signed it later. His evidence was that Lesley Saunders (Respondent's HR manager [LS 1]), told him that the purpose of backdating the contract was so that the Claimant "could go on the furlough scheme". None of this was in Mr Xu's witness statement but formed part of his answers during cross-examination. In Mr Xu's evidence, he stated that he was party to an attempt by the Respondent to fraudulently claim payment under the Coronavirus Job Retention Scheme by creating a back-dated contract of employment.
28. Ms Wang also said in cross-examination that the Claimant's contract of employment did not exist prior to 27 March 2020, and the email from Ms Roworth "*came out of the blue*". She went on to say that she had a conversation with the Claimant, and it was the Claimant who said it was "*OK to add him to furlough*" (meaning the Coronavirus Job Retention Scheme).
29. The Claimant denied this and said that his employment came about on 30 January 2020 when the Respondent was formed. He says that the purpose of the contract of employment was to provide him with a wage, given that the previous company that owned Brocket Hall had gone into administration, still owing the Claimant's company considerable sums of money. The wage was to be in addition to the fee that he charged, via IGRM, to the Respondent for managing Brocket Hall, although that fee was to be reduced to compensate. The Claimant's evidence was that the IGRM fee was reduced by "*slightly more*" than £38,000 per year, although no evidence of what this actual amount might be was provided to the Tribunal.
30. The Tribunal, however, is sceptical about this arrangement. The email from Ms Roworth on 27 March says "*Michael has asked me to add him to the payroll in time for March payroll (this would mean he would be paid/calculated for February and March Pay)*" [532]. This does not read as

though she has received a query from the Claimant asking why he wasn't paid in February; i.e. some mistake has been made and she is seeking permission to correct it. It reads as if she is putting the Claimant on the payroll for the first time. The Tribunal did not hear live evidence from Ms Roworth, but the contemporaneous document is more convincing than the Claimant's evidence, which the Tribunal found to be weak, for the reasons set out further below. The Tribunal is satisfied that the Claimant's employment was set up around late March 2020 and then falsely backdated. The Tribunal is further satisfied that it was the Claimant who proposed and initiated this arrangement.

31. It is clear to the Tribunal that the Claimant's role as an employee of the Respondent was something of a fiction. Nonetheless, this is the situation that the parties have engineered between themselves, and they now have to deal with the consequences of that relationship.

The meeting of 21 June 2024

32. Both parties accept there was a meeting on 21 June 2024. The start time, duration and content of that meeting are disputed.
33. It is common ground between the parties that the meeting was due to start at 09:00. Further common ground between the parties is that, at 09.33, the Claimant had a 15-minute telephone call with Mr Edmund of IGRM.
34. Both Mr Sampson and Ms Wang gave evidence to the effect that Mr Sampson's late arrival was caused by the fact that he had been held up in traffic on the A412. Ms Wang gave evidence that Mr Sampson had sent her text messages and had called her to say that he was running late. The latest of those text messages appears to have been at 08.46 at which point, Mr Sampson indicated that police cars had just made their way through the traffic, so he anticipated there was a problem ahead, which was causing the delay. This evidence is credible and the Tribunal accepted it.
35. On the Claimant's own case, the meeting must have started after 09:00, because he says in his typed note of the meeting "Some time after 09:00, I came out of my office to look for Joe and/or Linda. I was then advised by Linda that the meeting was in the boardroom" [286].
36. The Respondent's case is that Mr Sampson began the conversation by stating that it was intended to be a "*protected conversation*" under section 111A ERA 1996 and that this would mean that it would be 'off the record'. Mr Sampson says he then told the Claimant that he did not have to engage in that conversation and offered him an opportunity to have a few minutes to think and come back to the meeting. The Claimant accepted that suggestion and stepped out for about 15 minutes, before returning to the meeting room and agreeing to continue with the protected conversation. The conversation with Mr Edmund at 09:33, which is one of three that he said happened that day, is consistent with this timing.
37. The Respondent's case is that the meeting then continued by Mr Sampson going through the various detailed issues which had led to the Respondent

deciding to hold a protected conversation to explore the parting of the ways between the Respondent and the Claimant and IGRM. It is common ground between the parties that there were numerous issues raised by Mr Sampson on behalf of the Respondent; these are detailed in Ms Wang's note of the meeting [278-281] and the Claimant's handwritten notes taken during the meeting [282-285]. It is clear that a number of issues were raised, and the Claimant's contention that all of these could have been raised, discussed and noted in the time between "*Some time after 09:00*" [286] and prior to 09:33 is implausible. It is more likely that there was a break when the Claimant made his first call to Mr Edmund and then the meeting resumed and the allegations were discussed. This is consistent with the next agreed event, which is the Claimant and Mr Sampson taking a walk around the golf course at about 11:00. The Claimant's evidence does not account for what is alleged to have happened between him finishing his first call with Mr Edmund and him taking a walk around the golf course with Mr Sampson. The Respondent's case is more believable.

38. The Tribunal notes that the Claimant's case, and the witness evidence of Mr Edmund, is that the Claimant told him that he had been confronted with "*a litany of allegations*" and that he (the Claimant) had been told that he was being "*dismissed with immediate effect*" [NE 1(iv)]. The Tribunal further notes, however, that Mr Edmund made no contemporary note of what the Claimant told him on the telephone and did not make his witness statement until December 2025. Mr Edmund was not at the meeting and therefore can only base his statement on what he was told by the Claimant. The Tribunal does not find his account sufficiently compelling when compared against the believable timings and sequence of events as set out above.
39. That, however, does not mean that the Respondent's version of events is accepted in its entirety. The Tribunal still has to ascertain what happened at this meeting.
40. In paragraph 67 of her witness statement, Ms Wang's evidence was that her typed up notes of the meeting [278-281] were a correct and accurate record of the meeting. In cross-examination, she said they had been typed at the time and had only been subtly altered to correct typos. This does not explain why the notes begin "*Neil started the conversation by stating this is as a 'protected' conversation with ML and protected under section 111A Employment Rights Act 1996. This essentially means that the conversation will be 'off the record'*", when Mr Sampson confirmed in cross-examination that he did not refer to the conversation as a protected conversation nor did he refer to the relevant section of the Employment Rights Act 1996. Mr Sampson accepted that his knowledge of employment law was minimal. It is therefore highly unlikely that he quoted the Employment Rights Act 1996, and his own evidence was that he did not. It is therefore likely that Ms Wang's notes have been updated after the meeting to present a more positive (for the Respondent) account.
41. The Claimant's handwritten notes are contemporaneous and are made during the meeting. The Tribunal finds these are more likely to be correct.

42. The Tribunal is satisfied that the Claimant's handwritten note [285] "*for all those reasons BH has decided to terminate your contract with immediate effect*" was said at the meeting. It is unclear if the Respondent was referring to the IGRM contract for the Claimant's contract of employment, however given the overlap and entwined nature of these two contracts, it is inevitable that the termination of one would result in the termination of the other.
43. The parties agree that the Claimant and Mr Sampson did go for a walk around the golf course. The Claimant and Mr Sampson discussed what an appropriate settlement for IGRM might be. The Respondent was offering around £85,000 whereas the Claimant felt that IGRM was owed closer to £500,000. The Respondent also offered the Claimant three months' notice pay under his employment contract. They could not agree on a figure, so Mr Sampson said he would need to take instructions from the directors of the Respondent. [ML 19]
44. The timing of the Claimant's departure was also discussed. The Claimant said that he would prefer to stay until mid-September 2024, allowing completion of membership renewals in August and ensuring continuity through the Rose Ladies' Open [ML 22].
45. The Claimant made a further call to the IGRM board at 11:38 [294]. During the call, Mr Sampson came to the Claimant's office, the call was paused, and Mr Sampson explained to the Claimant that the board of the Respondent wished the Claimant to leave the premises that day.
46. The Claimant concluded his call and returned to the boardroom where, according to his witness statement, he "*advised all present that the shareholders and directors of IGRM wished to achieve a swift and amicable settlement but required all outstanding debts to be settled and a fair termination payment*" [ML 27].
47. The Respondent disabled the Claimant's IT and email access by 13:00 on 21 June 2024, and at approximately 19:00 the Claimant was escorted to his car by Mr Feng, Mr Xu and Ms Wang, who helped the Claimant to carry some boxes of personal possessions from his office to the Claimant's car.

Events following the meeting of 21 June 2024

48. On 26 June, the Claimant received correspondence from Neil Sampson and the Respondent's representatives, requesting the financial information in order that an agreement could be finalised by Friday 28 June. The Claimant responded to say that due to the way he felt his employment and the agreement with IGRM was terminated, he would be seeking legal advice. He said that the earliest appointment for this advice was Friday 28 June 2024 [308]. Mr Sampson replied on behalf of the Respondent, saying "*The need to come to a resolution quickly has taken on a new impetus this afternoon*". The reason given was that rumours were starting to be spread at the Respondent about the Claimant's employment status and the status of IGRM [309-310]. Mr Sampson says in his email "*this does now need to be dealt with quickly or some form of statement is going to have to be put out to staff and members*" [309].

49. On 28 June, the Claimant emailed a without prejudice proposal setting out financial settlement terms for his contract of employment and the sums owed to IGRM [312-314]
50. The Respondent's reply, sent by Mr Sampson, was by email dated 1 July 2024 [316-322]. The email set out the Respondent's proposals for settlement, which were considerably lower than those calculated by the Claimant. The email stated:

"I wrote to you on Friday to say that as a result of information provided to BHH staff by Matt Raven, who I understand you retain a close relationship with, news of your departure is already spreading around the club and almost certainly with suppliers. As such it is essential that a statement be made to members and accordingly the following statement will be circulated to members on Tuesday. I regret putting it in this way but if you are willing to agree an all inclusive settlement on Tuesday in the sum of £79,820 we can agree the wording of the statements to be circulated but if not BHH will proceed to send out the following statement" [321].

51. A draft form of the statement was provided underneath, which contained the phrase *"...with effect from 21st June 2024 Michael Longshaw stepped down from his position at Brocket Hall"* [321].
52. The Claimant did not reply to this email before 3 July 2024, on which day the Respondent circulated a communication to all staff, which was broadly similar to the draft that had been sent to the Claimant on 1 July. It stated *"as a member of the team here at Brocket Hall, we wanted to inform all staff members that effective from today (3 July 2024) Michael Longshaw will be stepping down from his position at Brocket Hall"* [323]. The communication went on to say *"On the half of the shareholders and executive management, we are delighted to welcome Lee Williams, will be joining a management team as general manager effective today"* [323].
53. On 8 July a similar statement was sent to the club's membership; stating *"Michael Longshaw has stepped down from his position at Brocket Hall with effective from the 3rd July 2024"* [324]. This was untrue, as, on the Respondent's own case, this was a period of negotiation under a protected conversation. The Claimant never told the Respondent that he was *"stepping down"*. Ms Wang's own evidence is *"The Respondent had not dismissed the Claimant at this stage, nor had any decision been made that it would proceed with a disciplinary process, or dismiss the Claimant should exit terms not be agreed"* [LW 80]. It is therefore entirely unclear why the Respondent made such an announcement.
54. On 9 July, Mr Xu sent an email to the Claimant, stating: *"following our investigation result, I would like to invite you for a formal meeting to discuss the details of findings"*. [326] A letter was attached that stated: *"The investigation into the allegations of misconduct made against you has now concluded. It has been decided that the matter should proceed to a formal*

disciplinary meeting" [327 -329]. The meeting was scheduled for 11:00 on 11 July 2024.

55. The Claimant responded on 10 July stating that he would not be attending the disciplinary meeting as he did not believe he was any longer employed by the Respondent [330]. He did not attend the meeting and the Respondent proceeded in his absence [QW 92]. The Respondent's case is that Qian Wang and Meng Xu concluded that the Claimant's actions amounted to gross misconduct [QW 95] and decided to dismiss the Claimant [QW 97]. No notes of this meeting exist, however, so the Tribunal cannot be sure that it actually took place.
56. On 17 July 2024, the Respondent sent a letter to the directors and shareholders of IGRM, in which, among other things, the Respondent accused the Claimant of misconduct [336].
57. On 23 July 2024, the Respondent wrote to the Claimant saying that he had been dismissed for misconduct with effect from 23 July 2024 [351-353]. An amended version of this letter was subsequently sent from the Respondent to the Claimant on 29 July, in which the reason for dismissal as amended from "*misconduct*" to "*gross misconduct*" [360-362].
58. The Claimant did not appeal following the Respondent's letter of 23 July 2024.
59. A letter was sent to the Claimant on 29 July 2024 [360], asking him to collect any of his or IRGM's property from Brocket Hall. The letter also set out the Claimant's final salary payment and final holiday entitlement calculation. There was an error in this calculation which was subsequently rectified and the appropriate balance paid to the Claimant.
60. ACAS conciliation was entered into on 16 July 2024 and concluded on 27 August 2024.
61. The Claimant submitted his ET1 on 31 October 2024.

Other relevant findings

62. The Tribunal also makes the following other relevant findings.
63. The LinkedIn page for Mr Lee Williams, as of May 2025 describes him as "Estate General Manager, Brocket Hall, Jun 2024 – Present" [372].
64. The Respondent did make a claim under the Coronavirus Job Retention Scheme in respect of the Claimant's employment. The parties agreed that, following an investigation by HMRC, the Respondent had been ordered to repay that money.
65. The entity Brocket Hall Estate Limited, now Brocket Estate Limited, company number (10491455) was set up in 2016. According to the Claimant's evidence, the company was going to be terminated, but the Claimant said to retain it, and Joe Feng agreed. The Claimant's evidence

was “*I agreed to hold the shares in trust*” for the Respondent. This Tribunal is satisfied that this was what the Claimant agreed to do, and therefore he had a duty to the Respondent to carry out this task. Mr Sampson ceased to be a person with significant control on 30 July 2020, and the Claimant became a person with significant control on 1 July 2020.

66. The Claimant was almost immediately replaced by Anne Marie Burke as a person with significant control. This was in breach of the Claimant’s duty to hold these shares in trust for the Respondent. Anne Marie Burke is the Claimant’s wife. She remained a person with significant control until October 2024, when control passed to a US company called Miava Global Llc. The shares were transferred to Miava Global Llc free of charge. The Claimant remained a director of Brocket Estate Limited.

The Law

67. Under section 98(1) of the Employment Rights Act 1996 (‘ERA’) it is for the employer to show the reason for the dismissal and that it is either for a reason falling within section 98(2) or for some other substantial reason of a kind such as to justify the dismissal of the employee.
68. An employee can bring a complaint of unfair dismissal to the Tribunal if they have completed at least two years continuous employment at the date of termination in accordance with section 108 ERA.
69. Section 111 ERA further provides that when bringing a complaint, the claim form must be presented to the Tribunal within 3 months of the effective date of termination, (or such further time as the Tribunal believes to be appropriate if it accepts that it was not reasonably practicable to present the claim within the 3-month period).
70. Conduct is a potentially fair reason for dismissal, and the Respondent relies on this reason.
71. The Tribunal has been referred to the test for the minimum standards to be expected in a misconduct dismissal set out in British Home Stores Ltd v Burchell [1978] IRLR 379.
72. Under the Burchell test, the Respondent needs to show:
- a. a genuine belief on the part of the employer that there has been misconduct;
 - b. based on reasonable grounds; and
 - c. following a reasonable investigation.
73. Where the employer does show a potentially fair reason for dismissing the Claimant, or where that is conceded, the question of fairness is determined by section 98(4).

- (4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –
- a. depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee; and
 - b. shall be determined in accordance with equity and the substantial merits of the case.

74. The burden of proof is neutral here.

75. The Tribunal will therefore assess whether the Respondent's decision fell within a band of reasonable responses. It is not for the Tribunal to substitute its own view of what the Respondent should or should not have done.

Strengths of the witness evidence

76. The Tribunal found the Claimant to be an unimpressive and evasive witness. He could not adequately explain how his business adviser role existed alongside his role as the de facto manager of Brocket Hall via IGRM. When asked what the separate duties were for that role, he said there was *"a role for IGRM and a role for Michael Longshaw"*. He was evasive on this point. The Claimant accepted in evidence that he was told by the Respondent not to use the title managing director in correspondence. It was put to him that he continued to use it, which he accepted that he did, but said it was only *"used internally"* and *"not on published contractual documents"*. He was then taken to emails he sent to a mortgage broker [127, 129] and to the manager of the contract for a marquee [134], and to emails to other third parties [135, 156, 167, 169, 207], all of which show him using the title managing director. His evidence that it was not used on external, contractual matters was clearly false. His evidence regarding the involvement of his daughter's company; of the transfers of the shares of Brocket Hall Estate Limited; of the leasing arrangements between the Respondent and IGRM; and in relation to his expenses claim all lacked credibility. The Tribunal found him to be an unreliable witness.
77. Ms Wang's evidence contained inaccuracies and inconsistencies that were exposed in cross-examination. She also introduced new evidence that was not in her witness statement in relation to the circumstances giving rise to the Claimant's contract of employment. She was unable to adequately answer questions put to her in cross examination about the contents of the meeting of 21 June 2024 and the communication that was sent out by the Respondent on 3 July 2024. The Tribunal considered her evidence to be unreliable.
78. Mr Xu's evidence also contained inaccuracies, and he similarly introduced new evidence that was not in his witness statement about the circumstances giving rise to the Claimant's contract of employment. He openly admitted that this was an attempt to create a backdated contract that

would allow the Respondent to claim furlough payments under the Coronavirus Job Retention Scheme in relation to the Claimant. It is unclear what he hoped to gain by such an admission. If he hoped to be commended on his honesty, he was being honest about his own dishonesty. If what he said was true, it was highly improper, even criminal, conduct for someone who is a Chartered Accountant and the director of the Respondent. The Tribunal found his evidence to be unreliable.

79. The circumstances regarding how the Claimant's employment came about, as per the findings of fact above, also further damage the credibility of the Claimant and the Respondent's directors.
80. Regarding Mr Edmund's credibility; the Tribunal had concerns regarding the wording of an email from Mr Edmund to Mr Longshaw, sent on 29 June 2023 [146], in which Mr Edmund says *"And in the shorter term, if Madeira [a project IGRM was working on] can move forward the way we want it to (and with a long term management / advisory opportunity intact) then it will be so much easier for you to play 'harder ball' with the Chinese!"*. The Tribunal is satisfied that *"the Chinese"* referred to in this email are the directors of the Respondent. The Tribunal is further satisfied that this demonstrates that there was animosity between Mr Edmund and the directors of the Respondent. Mr Edmund is also a director of IGRM which is currently embroiled in a High Court claim against the Respondent. The Tribunal considered Mr Edmund's evidence to be biased and did not find him to be a reliable witness.
81. Mr Sampson's evidence included assertions which were not backed up by evidence and were pure speculation on his part, such as what Mr Edmund may or may not have done during his telephone call with the Claimant on 21 June 2024. His evidence that on 21 June 2024 he was having an off the record conversation regarding the Claimant's employment is at odds with his email of 1 July 2024 [320]. He also said that the Claimant's use of the word *"terminated"* in the Claimant's email of 20 June 2024 [311] was only said by the Claimant after the Claimant had seen a solicitor. This, again, is pure speculation on the part of Mr Sampson. The Tribunal found his evidence to be unreliable.
82. The Tribunal found itself in the unenviable position when none of the witnesses that appeared before it were reliable.

Deliberation

83. Applying the law to the facts, the Tribunal made the following conclusions.

Unfair Dismissal

84. Having made the findings of fact above, the Tribunal's deliberations in relation to the dismissal case are relatively straightforward.
85. The Tribunal applied the test in British Home Stores Ltd v Burchell [1978] IRLR 379.

What was the reason, or principal reason for dismissal?

86. The Respondent asserts that the Claimant was dismissed for misconduct. Misconduct is a potentially fair reason for dismissal (s.98(2)(b) ERA 1996).

Did the Respondent genuinely believe that the Claimant was guilty of misconduct?

87. The Respondent's email, written by Mr Sampson, of 1 July stated *"It seems that the whole premise of the 'employment' was false and you cannot now seek to rely on it to make a claim of any sort against BHH. Obviously your claim for notice, accrued holiday pay and unfair dismissal are completely rejected"* [320]. At this stage, the Respondent is denying that the Claimant was an employee, which he clearly was, due to the situation they had engineered between themselves.
88. It is therefore unclear what the Respondent believed the contractual position to be at the time of the meeting of 21 June 2024. The Tribunal is satisfied that Respondent intended to end the contractual arrangements between itself and IGRM, and had not properly thought through what the consequence of this would be in relation to the Claimant's employment status.
89. There is also an email in the bundle from 11 May 2024, from Lee Williams to Ms Wang and Mr Xu. The email says: *"It was a real pleasure to meet with you both and Joe yesterday and thank you for taking the time to meet with me and listen to some of my proposals / suggestions for Bocket Hall"*. Ms Wang accepted in cross-examination that she and Mr Xu had met with Mr Lee on 10 May 2024. She said that Mr Lee was not intended to be a replacement for the Claimant, but would work as a *"general manager"*, working under the Claimant. She said the Claimant had not been invited to the meeting *"due to a previous bad experience in 2023/24"*. She further accepted that the Respondent had to be ordered to disclose this email.
90. Ms Wang's evidence was not credible. The idea that the Claimant would not be invited to essentially interview someone who was going to be working under or closely alongside him because of a *"bad experience"* is not a convincing one, and the Tribunal is satisfied that the Respondent did not want the Claimant to be involved with Mr Williams because the Respondent was looking to have Mr Williams take over the Claimant's role. This is important, as the meeting with Mr Williams predates the Claimant's dismissal. It significantly undermines the Respondent's case that misconduct was the reason for the Claimant's dismissal. The Tribunal does not accept Ms Wang's evidence that *"Lee Williams did not take over the Claimant's role as the Claimant was a 'Business Advisor' and not a 'General Manager'"* because, as found above, the Claimant's role as part of his employment and the Claimant's role as contracted through IGRM were inseparable.
91. The Tribunal is satisfied that the Respondent intended to recruit Mr Williams prior to the Claimant's dismissal, to do substantially the same job as the Claimant. The Tribunal is satisfied that this is a fact that materially

influenced the Respondent's decision to dismiss the Claimant on 21 June 2024.

92. The allegations subsequently relied upon by the Respondent to support the case that the Claimant was dismissed for misconduct were historical matters which had not previously been an issue. The Tribunal is satisfied that there was no genuine belief, at the time the Claimant was dismissed, that the Claimant was guilty of misconduct. Such allegations were formed later in an attempt to justify the dismissal.

If so, was that belief based on reasonable grounds? Had the employer carried out such investigation into the matter as was reasonable?

93. The Tribunal having found that there was no genuine belief in misconduct held by the Respondent, the claim for unfair dismissal succeeds. The Tribunal has, however, gone on to assess the next stage of the test, nonetheless.
94. When assessing the reasonableness of any investigation, the Tribunal must approach this as considering what was in a band of reasonable responses. Relevant are the nature of the allegations, the position of the Claimant and the size and resources of the employer. It is wrong to expect a meticulous investigation of the kind that would be done in a criminal enquiry.
95. There was no attempt to carry out a reasonable investigation prior to the meeting of 21 June. The first of the Claimant knew of the allegations against him was during that meeting.
96. Ms Wang said that an investigation, carried out by her and Mr Xu, began around May / June 2024. It did not involve the Claimant in any way. The Tribunal was not shown any notes from any investigation nor an investigation report. The Tribunal is satisfied that no reasonable investigation was carried out, and the allegations of gross misconduct were added later once the Respondent realised that the Claimant had a claim for unfair dismissal following his termination on 21 June 2024.

Did the employer follow a reasonably fair procedure?

97. Following on from the above, the Tribunal concludes that there was no fair procedure carried out by the Respondent prior to 21 June 2024. The Respondent terminated the Claimant's employment on that day without investigation or following any procedure at all.
98. For all the above reasons, the Tribunal concludes that the Claimant was unfairly dismissed.

Polkey contribution

99. Following Polkey v AE Dayton Services Ltd (1987) ICR 142, House of Lords, held that procedural fairness was an integral part of the statutory test for assessing the reasonableness of the dismissal. The ruling confirms that

failure to follow proper procedure makes a dismissal unfair, regardless of whether a fair process would have changed the outcome.

100. If an employer proves that a fair procedure would have led to the same dismissal, the compensatory award can be reduced by a percentage (0% to 100%) to reflect the likelihood of that outcome.

101. The Tribunal is satisfied that there were fundamental failings by the Respondent in the Claimant's dismissal which go beyond procedural failings. The Respondent has not proved that the Claimant would be dismissed in any event, but for the failures in procedure. *Polkey* is assessed at nil.

Contributory fault

102. In deciding a case of whether a dismissal was fair or unfair, the Tribunal need only look at the reasonableness of the Respondent's actions. When assessing contributory fault, however, the Tribunal must conduct its own assessment of the allegations against the Claimant and decide if any of them would have contributed to his dismissal.

103. The Tribunal is satisfied that it does not need to make findings across the range of allegations that the Claimant was accused of.

104. The Tribunal repeats its findings in relation to the entity Brocket Hall Estate Limited, now Brocket Estate Limited, company number (10491455), set out above. The Claimant's evidence was *"I agreed to hold the shares in trust"* for the Respondent. Mr Sampson ceased to be a person with significant control on 30 July 2020, and the Claimant became a person with significant control on 1 July 2020. The Claimant was almost immediately replaced by Anne Marie Burke as a person with significant control. Anne Marie Burke is the Claimant's wife. The Claimant had no permission from the Respondent to make this transfer. It is completely at odds with his obligation to hold the shares in trust for the Respondent.

105. By late 2020, therefore, despite his own evidence that he was to hold these shares in trust for the Respondent, the Claimant had in fact transferred control of the company's shares to his wife. She remained a person with significant control until October 2024, where control passed to a US company called Miava Global Llc. The Claimant said he presumed that it was his wife who authorised this. He said that this was done because of *"advice"* from *"an adviser"*. He further confirmed that his wife has no association with the US company, and nor does he or IGRM. The Claimant also explained that the US company did not buy the shares; they were transferred free of charge. He claims not to know why this was.

106. The Claimant's evidence in relation to the transfer of shares to his wife and then to the American company was vague and evasive. It did not come across as credible in the slightest that he did not know why this was done. It is more than likely that this was done as a mechanism to put the shares out of the reach of the Respondent. Even if the Claimant's evidence is to be accepted, he still breached the trust in which he held the company shares

by transferring them to his wife. When asked why he did this, the Claimant said “foolishly”. The Tribunal agrees. This was either a deliberate attempt to deprive the Respondent of control of the company, or gross incompetence. The Tribunal is satisfied that, regardless of the other allegations, this alone would mean the Claimant would have been dismissed for gross misconduct, or some other substantial reason, namely a breakdown of trust and confidence between him and the Respondent, once his actions came to light.

107. The Tribunal is satisfied that there is a 100% chance that the Claimant would have been fairly dismissed in any event, and this would have occurred within a maximum of six months from his actual EDT. The amount of any sum recoverable by the Claimant is therefore limited to his contractual entitlement for six months post his EDT.

Wrongful Dismissal

108. As per the findings above, the Tribunal is satisfied that there is a 100% chance that the Claimant would have been fairly dismissed within six months from his actual EDT. His notice period was three months. The Claimant's claim of wrongful dismissal succeeds as this is less than the six months by which time the Tribunal finds he would have been fairly dismissed. This sum, however, should form part of the six months' figure owed to the Claimant.

Outstanding Holiday Pay

109. It was not clear during the course of the hearing whether the Claimant was maintaining that there is still any sum due in respect of accrued but untaken holiday pay. He failed to identify any sums outstanding during the hearing and accepted that the sum of £3,653 which was referred to in the Grounds of Resistance had been paid to him. No evidence was provided in respect of any outstanding sums. This head of claim is therefore dismissed.

Unpaid Business Expenses

110. The Claimant's case is that the expenses claimed were part of his normal business expenses and such claims have been paid previously by the Respondent.
111. The Tribunal finds that the Claimant has failed to demonstrate how some of the expenses were in relation to his employment as a Business Adviser rather than the role that he undertook on behalf of IGRM. The Tribunal finds that the £600 for individual membership of the Welwyn Hatfield Business Club has no clear connection with the Business Adviser role and would be of greater benefit to the Claimant himself and/or for his role at IGRM.
112. In relation to the other expenses, however, it would be a relatively straightforward evidential exercise for the Respondent to show that no such claims of a similar nature had been made before, and therefore the remainder of the expenses were not connected to the Business Advisor role. Equally, disclosure might have shown that expense claims from the

Claimant of this nature were frequent, and were paid by the Respondent. The Respondent had a duty to disclose all relevant documents, whether they helped or hindered its own case. There was no such disclosure. The Tribunal is satisfied it can draw an adverse inference from this, and finds that such claims were likely to have been submitted previously by the Claimant and were paid by the Respondent. There is, therefore, no basis for withholding the payment for the remainder of the expenses claims in this case.

113. The claim for the remainder of the business expenses in the sum of £1,881.18 is well-founded and succeeds.

Disposal of Personal Property

114. The Tribunal can deal with this head of claim relatively briefly. The Claimant has failed to set out the jurisdictional basis for this claim. It does not seem to be one that can be heard in the Employment Tribunal. In any event, the Claimant has provided no evidence at all as to the items said to have been disposed of and their value. The figure in the schedule of loss is purely arbitrary and lacks any detail. Even if the Tribunal had jurisdiction to hear this claim, the Claimant has not provided convincing evidence for the claim to succeed. This claim is dismissed.

Conclusion

115. For the reasons set out above, the claim of unfair dismissal succeeds, but compensation is limited to a six-month period. The claim for wrongful dismissal succeeds. The claim for unpaid expenses succeeds in part. The claim in relation to personal property fails.
116. Remedy should be capable of agreement between the parties. If the parties are unable to agree on the value of the compensation due to the Claimant, the parties must write the tribunal and request that a remedy hearing be listed.

Approved by:
Employment Judge King

Date: 30 September 2026

SENT TO THE PARTIES ON
5 October 2026

FOR THE TRIBUNAL OFFICE

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